

81271-3

**COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

CASE NOS. 253163 -III; 253171 -III

**CITY OF SPOKANE,
Respondent,**

v.

**LAWRENCE JOHN ROTHWELL,
Petitioner.**

No. 253163-3-III

**CITY OF SPOKANE,
Respondent,**

v.

**HENRY E. SMITH,
Petitioner.**

No. 25317-1-III

BRIEF OF PETITIONERS

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ASSIGNMENT OF ERRORS

I. ASSIGNMENT OF ERRORS

- (1) The Spokane County Superior Court erred in affirming the decision of the Spokane County District Court denying Petitioners' motions to dismiss for lack of jurisdiction.
- (2) The Superior Court erred in affirming Petitioners' convictions under the Spokane Municipal Code when the District Court did not have proper jurisdiction to preside over such matters.
- (3) The Superior Court erred in deciding that a municipality only must substantially comply with statutory requirements governing the creation and maintenance of municipal courts.
- (4) The Superior Court erred in concluding that the administrative concerns of the District Court outweighed the need to comply with statutes governing municipal departments of district courts.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- (1) May county voters participate in the election of a full-time municipal court judge when Revised Code of Washington 3.46.060 requires that full-time municipal court judges be elected solely by the residents of the municipality?

(Assignment of Errors 1, 2.)

- (2) Is a municipality required to strictly comply with statutes regarding the creation and maintenance of municipal courts?
(Assignment of Errors 3.)
- (3) May a municipal court created under chapter 3.46 of the Revised Code of Washington avoid the requirements of a districting plan under chapter 3.38 of the Revised Code of Washington, which requires a designation of municipal departments, by declaring all departments of the district court to be municipal departments when those departments do not in fact serve as municipal departments? (Assignment of Errors 1, 2.)
- (4) May a municipality avoid the requirements of Revised Code of Washington 3.38.020(8), which requires a districting plan to allocate the amount of time that a district court judge will serve in a municipal capacity, by declaring that all district court judges are full-time municipal judges when those individual judges may or may not serve as full-time municipal judges?
(Assignment of Errors 1, 2.)
- (5) May a district court department exercise jurisdiction over offenses under a municipal code when the department does not

comply with the statutes governing the creation of a municipal department within a district court? (Assignment of Errors 1, 2.)

STATEMENT OF THE CASE

Henry Smith and Lawrence Rothwell were both charged with crimes under the Spokane Municipal Code in April of 2005.¹ (*Smith* AR Am. Compl. at 1; *Rothwell* AR Am. Compl. at 1.) Both cases were assigned to the Honorable Judge Patti Walker in Department Four of the Spokane County District Court (“District Court”). (*Smith* AR Mot. to Dismiss for Lack of Jurisdiction; *Rothwell* AR Mot. to Dismiss for Lack of Jurisdiction.) Mr. Smith and Mr. Rothwell filed pretrial motions to dismiss for lack of jurisdiction, challenging both the jurisdiction of Department Four and of the individual judge. *Id.* Both motions were denied in a Memorandum Opinion by Judge Walker on July 27, 2005. (*Smith* AR Mem. Op. Den. Def.’s Mot. to Dismiss; *Rothwell* AR Mem. Op. Den. Def.’s Mot. to Dismiss.) Subsequently, in a trial presided over by Judge Walker, Mr. Smith was convicted of two misdemeanors. (*Smith* CP 3-8.) Mr. Rothwell was also convicted, in a trial presided over by District Court Commissioner Brad Chinn, of a misdemeanor. (*Rothwell*

¹ The Administrative Record (AR) consists of the records from the Spokane Municipal Court for Henry E. Smith (Muni. Ct. No. B42847) and Lawrence John Rothwell (Muni. Ct. No. B040445). Many of the records for Mr. Smith and Mr. Rothwell are duplicative. Therefore, to avoid unnecessary repetition when the records are the same, only Mr. Smith’s records will be cited.

AR J.) Both defendants appealed their convictions to the Spokane County Superior Court (“Superior Court”). (*Smith* AR Notice of Appeal to Superior Ct.; *Rothwell* AR Notice of Appeal to Superior Ct.) The Superior Court joined the appeals of Mr. Smith and Mr. Rothwell. (*Smith* CP at 3.)

The Honorable Judge Rebecca Baker of Stevens County, sitting for the Spokane County Superior Court, presided over Mr. Smith’s and Mr. Rothwell’s appeal on January 18, 2006. (*Smith* CP 3.) Judge Baker reversed and dismissed Mr. Smith’s conviction for failure to sign acknowledgement of infraction based upon an insufficiency of the evidence. (*Smith* CP at 4.) However, Judge Baker rejected Mr. Smith’s argument pertaining to the jurisdiction of Department Four of the District Court and affirmed his conviction for driving under the influence. *Id.* Similarly, Judge Baker rejected Mr. Rothwell’s jurisdiction argument and affirmed his conviction. (*Rothwell* CP at 4.) Mr. Smith and Mr. Rothwell both filed timely notices for discretionary review before this Court on June 20, 2006 on the issue of jurisdiction. (*Smith* CP at 22; *Rothwell* CP at 22.) Discretionary review was granted for both cases on September 20, 2006 and consolidated for appeal on October 31, 2006.

The City of Spokane’s Municipal Court (“Municipal Court”) is currently organized as a municipal department under chapter 3.46 of the Revised Code of Washington. Spokane Municipal Code (SMC) 05.01.010;

05.01.030. The history of the development of the Municipal Court was set out in detail by the Washington State Supreme Court in *Nollette v. Christianson*, 115 Wn.2d 594, 800 P.2d 359 (1990), and provides the background for this appeal.

The Spokane Municipal Court was created pursuant to the Justice Court Act in 1961. *Id.* at 601, 800 P.2d 359. In 1961, the City of Spokane petitioned the County of Spokane to create a municipal department within the District Court. *Id.* In response to this petition, the Spokane County Council adopted the Justice Court Districting Plan (“Districting Plan”) setting forth the different court districts in 1962. (*Smith* AR Mot. to Dismiss for Lack of Jurisdiction, Aff. in Support of Writ of Review of Katherine Knox (hereinafter “Aff. Knox”) Ex. A.) Under the original 1962 plan, one of the District Court departments was designated as a municipal department and the corresponding judicial official was designated as a part-time municipal judge. *Nollette*, 115 Wn.2d at 602, 800 P.2d 359. In 1970, the Districting Plan was amended to provide that all five of the District Court departments served as municipal departments and all District Court justices functioned as part-time municipal judges. *Id.* In 1982, the Districting Plan was altered again. *Id.* at 603. Spokane County agreed to provide the services of judicial officials equivalent to “two full time judges on a year around [sic] basis” for the Municipal Court for an

agreed amount of compensation by the City of Spokane. *Id.* The agreement specifically provided that: "Judges shall be provided for the two Spokane Municipal Divisions on a rotating basis from those District Court Judges assigned by the District Court Presiding Judge." *Id.*

The current Districting Plan indicates that there are ten full-time elected judges in District Court. Nine of these positions are filled at this time. (*Smith* AR Aff. Knox Ex. B at 3.) Under the current Districting Plan, all nine of the District Court judges are designated as "a municipal department". Spokane County Code (SCC) 1.16.050. Since 2002, all of the District Courts judges have been designated as full-time Municipal Court judges. (*See Smith* AR Aff. Knox Ex. A at 32); SCC 1.16.050.

All nine District Court judges do not serve as full-time Municipal Court judges. An inter-local agreement from 2004 between the City and the County specifies that only the equivalent of 3.7 full-time District Court judges serve as Municipal Court judges. (*Smith* AR Mot. to Dismiss for Lack of Jurisdiction, Decl. Terri Pfister (hereinafter "Decl. Pfister") at 6.) No interlocal agreement was found for the year 2005. (*Id.* at 2.) Thus, the City effectively declared its use of the equivalent of 3.7 full-time judges to serve as Municipal Court judges, but failed to allocate how much time each department of District Court will spend as a Municipal Court or how the City will pay for such costs in the year of 2005.

Prior to Petitioners' trials, the most recent District Court elections were in 2002. The 2002 election ballot did not disclose to the candidates or voters that Department Four, the department that Judge Walker was elected to, would be serving as a municipal department. (*Smith* AR Mot. to Dismiss for Lack of Jurisdiction, Decl. Paul Brandt (hereinafter "Decl. Brandt") at 2.) In fact, the ballot did not inform voters that any of the District Court positions would be serving as the Municipal Court in either a full or part-time capacity. *Id.* Furthermore, the citizens of the City of Spokane were not the only people who voted for the full-time Municipal Court judges. *Id.* Qualified voters from the entire County of Spokane were allowed to vote for Judge Walker and all other Municipal Court judges. *Id.*

Under the current scheme, the determination of who serves the City of Spokane as a Municipal Court judge is a decision made by voters outside of the Municipal Court's jurisdiction and without a public designation of which of the District Court departments will serve either in a full or part-time capacity as the Municipal Court. The actual composition of the Municipal Court is a product of administrative decision making. While all District Court departments are technically considered to be municipal departments, which departments actually serve in that capacity is determined by an annual rotational schedule without input from

City voters. *See* Spokane County Code 1.16.050. At the time of Petitioners' convictions, there were two District Court departments and judges serving in full-time municipal capacities: Department Four held by the Judge Walker and Department One held by the Judge Vance Peterson. (*Smith* AR Aff. Knox Ex. C at 1, Ex. D at 1.) The other 1.7 Municipal Court positions were filled by two other District Court judges, Judge Derr in Department Two and Judge Wilson in Department Seven, both of whom presided over two domestic violence dockets shared by the County and the City. *Id.* This current arrangement does not comply with the governing statutes for municipal courts since it operates without the sole input of the citizens of Spokane and without adequate notice to the voting public.

ARGUMENT

Judge Baker erred in her determination that Department Four of the Spokane County District Court ("District Court") and Judge Walker had jurisdiction over Petitioners for alleged violations of the Spokane Municipal Code. The City of Spokane has not complied with a number of statutory requirements regarding the creation of municipal courts and, consequently, the Municipal Department of the Spokane County District Court ("Municipal Department") lacked jurisdiction over Petitioners.

First, Municipal Court judges are not elected solely by the residents of the City of Spokane as required by statute. Second, the City has not specifically designated which of the District Court departments serve in a full or part-time capacity as the Municipal Court, nor was there a current agreement between the City and County allocating how much time any of the District Court judges would spend serving as Municipal Court judges at the time of Petitioners' trials. Instead, the determination of who serves as a Municipal Court judge is an administrative decision made by the District Court itself. This arrangement does not comply with state statutory requirements. Third, the election procedures adopted by the County and City do not designate which, if any, of the District Court positions will serve as municipal departments. Consequently, Department Four of the District Court was not legally created and did not have jurisdiction over Petitioners because the Department was not a legally created Municipal Court and Judge Walker was not a legally elected Municipal Court judge.

I. THE APPROPRIATE STANDARD OF REVIEW IS *DE NOVO*.

The question before Judge Baker was a jurisdictional issue dealing with the City of Spokane's compliance with state statutory procedures. The appropriate standard of review for conclusions of law is *de novo*. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996). Judge

Baker's decision involved conclusions of law relating to statutory interpretation and, as such, should be reviewed *de novo*.

II. THE CITY OF SPOKANE IS REQUIRED TO STRICTLY COMPLY WITH STATUTES GOVERNING THE ESTABLISHMENT OF MUNICIPAL COURTS.

Strict compliance with statutes governing the establishment of municipal courts is required in order to ensure judicial accountability. *See State v. Moore*, 73 Wn. App. 805, 813-14, 871 P.2d 1086 (1994). When statutes provide particular procedures for creating a judicial office, there must be strict compliance with those procedures. *Id.* (citing *In re Eng*, 113 Wn.2d 178, 189-91, 776 P.2d 1336 (1992)). Such procedures must be followed unless they are deemed unconstitutional. *State v. Oakley*, 117 Wn. App. 730, 736-37, 72 P.3d 1114 (2003). Strict compliance is required in order to ensure that judicial officers are held directly accountable to voters of the jurisdiction. *Moore*, 73 Wn. App. at 813-14, 871 P.2d 1086. If the government is not required to strictly comply, the purpose of the legislature in creating the specific requirements in question is frustrated. *Id.* at 814.

Substantive election procedures differ from election technicalities. The determination of the pool of qualified voters for a judicial office is a substantive procedure related to the creation of a judicial office and strict compliance is required. Mere technicalities regarding ballot requirements

and voting times may generally² be overlooked as long as there is substantial compliance with the law. *Sudduth v. Chapman*, 88 Wn.2d 247, 255, 558 P.2d 806 (1977). The composition of the electorate is not a mere technicality. Instead, it is a particular procedure governing the creation of a judicial office and is necessary to ensure that judicial officers are directly accountable to the voters of their jurisdiction.

The City failed to comply with the procedures necessary to create and maintain its Municipal Court. The statutes involved in this case, chapters 3.38 (District Court Districts) and 3.46 (Municipal Departments) of the Revised Code of Washington, govern the establishment and administration of judicial departments. While some statutes expressly address election issues, such as RCW 3.46.063, the statutes are aimed at setting forth particular procedures for establishing municipal departments and municipal court judges. As such, strict compliance is required. *Moore*, 73 Wn. App. at 813, 871 P.2d 1086. Judge Baker erred in her decision that only substantial compliance with the governing statutes was required. (*Smith* CP at 12.)

² An exception to the general rule is if a statute governing elections is mandatory in nature, goes to the merits of the election, or affects the outcome of the election. *Murphy v. City of Spokane*, 64 Wn. 681, 684, 117 P. 476 (1911). In such cases, strict compliance with the law is required. *Id.*

III. JURISDICTION OVER PETITIONERS WAS UNLAWFUL BECAUSE DEPARTMENT FOUR WAS NOT LAWFULLY CREATED AND JUDGE WALKER WAS NOT LAWFULLY ELECTED.

The City of Spokane failed to comply with the statutory requirements governing the establishment of municipal departments under chapters 3.38 (District Court Districts) and 3.46 (Municipal Departments) of the Revised Code of Washington by failing: (1) to restrict the eligible pool of voters for full-time Municipal Court judges to City voters, (2) to designate which District Court departments would actually serve as the municipal departments, and, (3) to allocate the amount of time and salary that each District Court judge would serve the City. Finally, the City's noncompliance cannot be justified by the administrative concerns of District Court nor have they been cured by subsequent legislative enactments.

A. Only Residents of the City of Spokane Shall Elect Full-Time Municipal Court Judges.

The Municipal Court is not lawfully created because its judges are not elected solely by the residents of the City of Spokane. Full-time municipal court judges must be elected.³ RCW 3.46.063. The only people

³ RCW 3.46.063 states, "[n]otwithstanding RCW 3.46.050 and 3.46.060, judicial positions may be filled only by election under the following circumstances: (1) Each full-time equivalent judicial position shall be filled by election." The term "notwithstanding" means "in spite of." Black's Law Dictionary (8th ed. 2004). Thus, even though RCW

who can vote for municipal court judges are the residents of the city that they serve. RCW 3.46.070 ("Only voters of the city shall vote for municipal judges").

Furthermore, the statutory requirements for the creation of municipal courts explicitly state what is required to provide adequate notice to the electorate. "In each district court district where an election is held for the position of municipal judge, the county auditor, prior to the date for filing declarations for the office of district judge, shall designate the proper number of municipal judge positions." RCW 3.46.070. The primary purpose behind this requirement is to provide notice to the residents. *In re Eng*, 113 Wn.2d 178, 191, 776 P.2d 1336 (1989) ("notice is a crucial component of the democratic process"). As the Washington State Attorney General's Office notes, "It is clearly now necessary for the ballot to disclose that one or more positions on the district court will serve the municipal department, whether full-time or part-time." AGO 1995 No. 9, p. 8.

Department Four of the District Court does not have jurisdiction over the Petitioners because its judicial official was not properly elected. This problem is not limited to the election of Judge Walker in 2002. In

3.46.050 allows full-time municipal judges to be selected either by election or appointment in accordance with city legislation, the new requirement is that full-time municipal judges must be elected.

general, the election procedures of the City and County do not comply with the procedures required for establishing municipal departments within district courts. It is a question of the propriety of the judicial office and not one of mere irregularities in one particular election. As such, strict compliance with the governing statutes is required. *See supra*.

The citizens of the City of Spokane were not the only people who voted for Judge Walker or any other full-time Municipal Court judges. (*Smith* AR Decl. Brandt at 2.) Qualified voters from the entire County of Spokane were allowed to vote for Judge Walker even though she was serving as a full-time Municipal Court judge at the time of Petitioners' trials. *Id.* Judge Baker reasoned that compliance with RCW 3.46.070 was not necessary because the residents of the City were allowed to vote for the municipal judges. (*Smith* CP at 12.) However, the real issue is not whether the residents were allowed to participate, but that the entire County of Spokane was allowed to select the municipal judges for the City of Spokane. Such a practice limits the accountability of the Municipal Court to the people under its jurisdiction because outsiders are allowed to affect the outcome of the elections. This would be analogous to a situation where County voters were allowed to vote for the City Mayor. Municipal Court judges must be elected solely by City voters. RCW 3.46.070.

Arguably, if this Court requires the City to comply with the applicable statutes, the Districting Plan will need to be amended. A judge serving a municipal court created under chapter 3.46 also serves as a district court judge. RCW 3.46.020. There is a solution that exists outside of merely disregarding the requirement of RCW 3.46.070. In the case of *Nollette*, the Supreme Court viewed the Spokane County Districting Plan, which provided that all of the District Court judges served as a municipal department, as “establish[ing] the relevant pool of judges who are eligible to serve as part-time municipal court judges.” 115 Wn.2d at 604-05, 800 P.2d 359. The Court then looked at the governing provision in chapter 3.46 as providing the “mechanism for the city to select the part-time municipal court judges from the eligible pool.” *Id.* at 605. While the Districting Plan and Spokane Municipal Code have been altered since *Nollette*, the analysis provides guidance on how to reconcile the two. Thus, because the Districting Plan declares all District Court departments as a municipal department, all departments and District Court judges are eligible to be designated as a department of the Municipal Court or elected as a Municipal Court judge. In deciding which of the District Court judges should serve as full-time Municipal Court judges, only the residents of the City of Spokane should be allowed to vote.

As a final matter, the City of Spokane failed to comply with the election requirements for full-time municipal judges. First, the 2002 election ballot did not disclose to the candidates or the public that Department Four would be serving as a municipal department. (*Smith* AR Decl. Brandt at 2.) Judge Walker was elected to serve in Department Four. *Id.* In fact, the ballot did not inform voters that any of the Spokane County District Court positions would serve as a Municipal Court in either a full or part-time capacity.⁴ *Id.* This violates RCW 3.46.070.

The municipal judges for the City of Spokane are not elected solely by the voters of the City of Spokane or pursuant to local legislation, but are appointed at the District Court's discretion. This procedure clearly violates the provisions set forth in the governing statutes. Furthermore, such actions circumvent the intent of the legislature. The statutes require notice to the community of the actual district court departments that will serve as municipal courts and limit the pool of voters to city residents in order to increase the level of accountability of municipal court judges to the people that they serve.

⁴ At the time of Petitioners' convictions there were two District Court judges serving in full-time Municipal Court positions: Department Four held by the Judge Patti Walker, and Department One held by the Judge Vance Peterson. (*Smith* AR Aff. Ex. C at 1, Ex. D at 1.) The other 1.7 Municipal Court positions were filled by two other District Court judges, Judge Derr in Department Two and Judge Wilson in Department Seven; both presided over two domestic violence dockets shared by the County and the City. *Id.*

B. The City of Spokane's Current Districting Plan Fails to Designate Which Departments Actually Serve as a Municipal Court.

The City refuses to designate which District Court departments actually serve as municipal departments or to designate which judges actually serve as Municipal Court judges in its current Districting Plan.⁵ A districting plan must designate which departments within the district court will serve as municipal departments.⁶ RCW 3.38.020(6). More specifically, a judge serving a municipal department created under chapter 3.46 must be designated as a municipal judge. RCW 3.46.010. Thus, a districting plan must designate which district court departments will serve as municipal departments and which judges will serve as municipal judges.

The City of Spokane's current Districting Plan fails to comply with the above requirements. As a preliminary matter, the Municipal Court is organized under chapter 3.46 of the Revised Code of Washington. *See Nollette*, 115 Wn.2d at 601, 800 P.2d 359. The original 1962 Districting Plan properly designated one of the District Court departments and its corresponding judicial officer as a municipal department. *Nollette*, 115

⁵ The current Districting Plan is set forth in chapter 1.16 of the Spokane County Code (SCC).

⁶ Both chapters 3.38 and 3.46 of the Revised Code of Washington are applicable in this situation. Chapter 3.46 includes provisions dealing with municipal departments, while chapter 3.38 governs departments of district courts. When a municipal department is part of a district court, both chapters apply. *See, e.g.*, SMC 05.01.010 (cross-referencing both chapter 3.38 and 3.46).

Wn.2d at 602, 800 P.2d 359. However, the current version does not. The current Districting Plan indicates that there are ten full-time elected judges in the District Court; nine of those positions are currently filled. (*Smith* AR Aff. Knox Ex. B at 3.) Furthermore, the Districting Plan designates all nine of the District Court judges as “a municipal department” and declares that they shall function as municipal judges. SCC 1.16.050. All District Court judges are deemed to be full-time Municipal Court judges.⁷ See Spokane County Resolution 2-0301, App. B-64. This is both misleading and illegal.

All nine of the District Court departments do not function as municipal departments. (See *Smith* AR Aff. Knox Ex. C at 1, Ex. D at 1.) All nine of the judges do not serve as full-time municipal employees. (See *Smith* AR Decl. Pfister at 6.) Thus, the Districting Plan fails to designate which of the District Court departments actually serve as a Municipal Court. In effect, the power of the District Court is enlarged to include jurisdiction over violations of the Spokane Municipal Code since each District Court judge concurrently exercises jurisdiction over District and Municipal Court cases without an agreement distinguishing between those two capacities.

⁷ Prior to 2002, the Districting Plan provided that all nine justice of the district court functioned as part-time municipal court judges. See Spokane County Resolution 2-0301, App. B at 64.

Even though the Municipal Court is a department of the District Court, the District Court cannot have concurrent jurisdiction over cases where the municipal department has exclusive jurisdiction. *See Ledgerwood v. Lansdowne*, 120 Wn. App. 414, 419-20, 85 P.3d 950 (2004). A municipal court has exclusive jurisdiction over matters arising from violations of city ordinances. RCW 3.46.030. Consequently, if the municipal department is not a legally created Municipal Court because the Districting Plan fails to designate actual municipal departments or judges, it does not have jurisdiction over the Petitioners.

C. The City of Spokane Failed to Allocate the Amount of Time and Salary that Each District Court Judge Would Spend in a Municipal Capacity.

If a district court judge serves a dual role as a district and municipal court judge, the governing districting plan must allocate the amount of time that the judge will spend in service to the municipal court. RCW 3.38.020(8). Part-time municipal judges may be appointed pursuant to local legislation and their salary paid jointly by the county and city. RCW 3.46.060; 3.46.090.

Pursuant to local legislation, "The City pays to the County of Spokane such proportion of the salary and expenses of the municipal judges as may from time to time be agreed to in writing between the City and County." SMC 05.02.020. As noted above, the most recent inter-

local agreement between the City and the County specifies that there are only the equivalent of 3.7 full-time Municipal Court judges. (*Smith* AR Decl. Pfister at 6.) Thus, the City effectively declared its use of the equivalent of 3.7 full-time judges to serve as Municipal Court judges, but failed to allocate how much time each department or judge will spend as a Municipal Court or how the City will pay for such costs in the year of 2005.⁸ Arguably, this is not necessary if all of the District Court judges serve as a full-time Municipal Court judges, but in that case the City should be paying their full salary.

Instead, the City has attempted to designate all of the District Court judges as Municipal Court judges to avoid allocating time and expenses for each judge. This misleads the voters to believe that all nine District Court judges are functioning as full-time employees of the City, a practice that violates the governing statutory provisions under chapters 3.38 and 3.46 of the RCW.

D. Administrative Concerns Do Not Justify Non-Compliance with Statutory Requirements for Municipal Courts.

The Spokane County Superior Court erred in concluding that the administrative concerns of District Court outweighed the need to comply with the governing statutes. (*Smith* CP at 10-12.) The City of Spokane

⁸ No inter-local agreement was found for the year 2005. (*Smith* AR Decl. Pfister at 2.)

cannot delegate the authority of City voters to choose Municipal Court judges to the District Court. A similar delegation was dismissed as being contrary to public policy by the Washington State Supreme Court. *Nollette*, 115 Wn.2d at 608, 800 P.2d 359 (dealing with a potential delegation of authority to choose Municipal Court judges from the City of Spokane to the County). Judge Baker found that the purpose of designating all nine District Court judges as full-time Municipal Court judges was to allow for flexibility in the scheduling of District and Municipal Court matters. (*Smith* CP at 10.)

A similar argument regarding the need for flexibility was made in *State v. Moore*. 73 Wn. App. 805, 871 P.2d 1086 (1994). In that case, Skamania County created the position of an additional commissioner without following the exact procedures set forth in the Justice Court Act. *Id.* at 813, 871 P.2d 1086. The county failed to specify the number and location of its district court commissioners; instead, it entrusted such decisions to the discretion of the district court judges. *Id.* The Division II Court of Appeals concluded that the office of the commissioner was not properly created because the County was required to strictly comply with the governing statutory procedures regardless of the need for flexibility. *Id.* at 813-14.

Like *Moore*, the creation of a judicial position cannot be left to the discretion of the judiciary. The jurisdiction of an inferior court must be determined by the legislative branch, not by the administration of the lower courts. WA Const., art. IV, § 12; *cf.* GR 29(e) (explaining the duties of a presiding judge in a district court). According to the legislature, municipal departments and judges must be specifically designated. RCW 3.46.010; 3.46.030. Judges serving in part-time municipal capacities must have the amount of time spent in each capacity included in the districting plan. RCW 3.38.020(8). These requirements have not been met in this case and the need for flexibility amongst the judges should not outweigh the need for public notice and accountability of the judiciary.

E. The City's Non-Compliance Has Not Been Cured by Subsequent Legislative Enactments.

The City has failed to cure its noncompliance by designating the actual departments and judges that serve as the Municipal Court. As noted above, the Districting Plan does not accurately designate which departments and judges function as municipal departments. The City could cure this noncompliance by subsequent legislative enactments. A subsequent legislative enactment cures government noncompliance in the creation of a governmental department if the legislative enactment “incorporate[es] the necessary elements [that] can provide the notice and

authorization necessary to cure the deficiency.” *State v. Amodio*, 110 Wn. App. 359, 365, 40 P.3d 1182 (2002) (citing *In re Eng*, 113 Wn.2d 178, 191, 776 P.2d 1336 (1989)). Thus, in *In re Eng*, the Seattle Municipal Court was able to belatedly cure its noncompliance with the requirements for the creation of a municipal court by adding a provision in the city code that explicitly identified the city’s municipal court departments. *In re Eng*, 113 Wn.2d at 191, 776 P.2d 1336.

In this case, the City of Spokane has not cured its noncompliance. An inter-local agreement from 2004 between the City and the County specifies that there are only 3.7 full-time equivalent Municipal Court judges, not nine full-time positions as stated in the Districting Plan. (*Smith* AR Decl. Pfister at 6.) The agreement does not designate the actual departments or judges serving in municipal capacities. Furthermore, notice was not provided to the community regarding which of the District Court positions would function as municipal departments on a ballot or by local legislation. (*Smith* AR Decl. Brandt at 2.) Thus, unlike the Seattle Municipal Court in *In re Eng*, the Spokane Municipal Court’s statutory deficiencies have not been cured by subsequent local legislation.

IV. PETITIONERS' CONVICTIONS MUST BE REVERSED
BECAUSE DEPARTMENT FOUR AND JUDGE WALKER DID NOT
HAVE JURISDICTION OVER THEIR CASES.

Petitioners' misdemeanor convictions must be reversed and remanded. A municipal court has exclusive jurisdiction over matters arising from violations of city ordinances. RCW 3.46.030. Consequently, a district court judge that has not been properly identified and elected as a municipal court judge does not have jurisdiction over violations of municipal ordinances. *See Ledgerwood*, 120 Wn. App. at 419-20, 85 P.3d 950. Similarly, a district court department that is not a properly created municipal department cannot have jurisdiction over cases that involve violations of municipal ordinances.

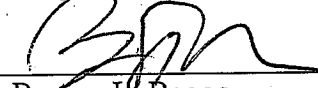
As argued above, Department Four was not a lawfully created Municipal Court and, consequently, the judge serving in that court department not have jurisdiction over Mr. Smith or Mr. Rothwell. Furthermore, Judge Walker was not a lawfully elected Municipal Court judge and, thus, did not have jurisdiction to hear cases involving violations of municipal ordinances. As such, Petitioners' convictions must be reversed.

CONCLUSION

For the aforementioned reasons, Department Four and Judge Walker did not have jurisdiction over Petitioners because the City of Spokane failed to comply with the statutes governing the creation of municipal courts as departments within district courts. Mr. Smith's and Mr. Rothwell's convictions should be reversed because Department Four of the District Court did not have jurisdiction to hear cases involving violations of municipal ordinances.

DATED this 7th day of November, 2006.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to RAP 18.5 and CR 5(b)(1), I certify I am not a party to this action, I am competent to testify therein, and I caused to be delivered a true and correct copy of the foregoing Petitioners' Brief to Michelle Szambelan, Acting Spokane City Prosecutor, 909 W. Mallon, Spokane, WA 99201, at or before the time of filing.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 7th day of November 2006.

A handwritten signature in cursive script, appearing to read "James Schwarzenbach", written in dark ink.